

Special insurance systems for motor vehicle liability in Belgium and the Netherlands

Abstract

In many countries special facilities have been created, either by policymakers or by insurance companies, to deal with risks that are very difficult to insure or are even considered uninsurable on the commercial market for motor liability insurance. In Belgium, the Tarifieringsbureau Auto was created a decade ago by statute. In the Netherlands, a large number of insurers created Terminus (now Rialto) in 1966. We examine how these special facilities relate to the economic analysis of accident law. Through interviews with representatives of these facilities and through analysis of their yearly reports, we examine the behaviour of these companies with respect to premium setting and policy conditions, and whether these facilities keep bad risks “on the road” and thus have negative consequences as far as the accident risk is concerned. We tentatively conclude that there may be reason for concern (especially in the case of Belgium) if special insurance schemes allow bad drivers to continue their activity.

Keywords: motor liability insurance, involuntary market, law and economics

1. Introduction

Automobile insurance is a compulsory purchase for most drivers in Europe and the United States. Obviously, this obligation raises concerns about affordability and availability.¹ To mitigate such problems, in most legal systems special facilities have been created, either by policymakers or by insurance companies, to deal with risks that are very difficult to insure or are even considered uninsurable on the commercial market. While individuals with a heavy accident record will often find it impossible to find insurance on the voluntary insurance market, they have a good chance of finding coverage on the involuntary market, also known as the residual or shared market.²

In Belgium, the Tarifieringsbureau Auto was created a decade ago by statute. In the Netherlands, a large number of insurers created Terminus in 1966. This special facility later changed its name to Rialto. Insurers have offered different reasons for the creation of such facilities. On the one hand they argue that if these types of facilities are not offered, there is a danger that individuals who cannot find coverage would drive without insurance. The duty to have mandatory insurance for traffic liability is indeed never perfectly enforced. In that case the insolvency risk they create would often be shifted to the collectivity of insureds. A second reason is related to the corporate social responsibility of insurers: they consider it their task to provide coverage also for “hard to insure” risks.

¹ See e.g. Regan, L., Tennyson, S. and Weiss, M., *The Relationship Between Auto Insurance Rate Regulation and Insured Loss Costs: An Empirical Analysis*, *Journal of Insurance Regulation*, 2009, at p. 24.

² The term involuntary follows from the fact that in contrast to a normal competitive market, insurers are not free to select those drivers they wish to insure. The term shared follows from the fact that profit and losses are shared by all insurers selling motor liability insurance.

In this article, we examine how these special facilities relate to the economic analysis of accident law.³ Theory holds that via an appropriate differentiation of premiums incentives should be provided to potential injurers to adopt preventive measures. To the extent the “hard to insure” individuals would pose a higher risk, one would thus expect higher premiums. These should not only provide incentives for prevention, but also incentives for policyholders to stay only briefly with the special facility in order to return to the voluntary market. However, to the extent that policyholders would not be charged actuarially fair premiums, problems may arise. First, this could lead to a cross-subsidization between the good risks and the bad risks, since it's the collectivity of insureds that pay for the facility. Second, this cross-subsidization could also insufficiently incentivize policyholders. If premiums do not correctly reflect the risk posed by the insured, the (presumably lower) premiums could have the effect of increasing the accident risk. Through interviews with representatives of the Tariferingsbureau and Rialto and by analyzing their yearly reports, we examine the behaviour of these companies with respect to premium setting and policy conditions. We also look at the question whether and when the policyholders return to the voluntary insurance market. Such a study can provide interesting insights with respect to the extent to which different policy and premium conditions effectively influence the behaviour of policyholders. Moreover, in so far as cross-subsidization takes place, the question can also be asked whether these facilities keep bad risks “on the road” and thus have negative consequences as far as the accident risk is concerned.

³ Previous literature dealing with involuntary motor liability insurance markets have mainly (but not solely) focused on the consequences of regulation of the voluntary market on the size of the involuntary market. See e.g. Grabowski, H., W.K. Viscusi and W.S. Evans, 1989. "Price and Availability Tradeoffs of Automobile Insurance Regulation." *Journal of Risk and Insurance*, 56: 275-299; Regan, L., Tennyson, S. and Weiss, M., The Relationship Between Auto Insurance Rate Regulation and Insured Loss Costs: An Empirical Analysis, *Journal of Insurance Regulation*, 2009, 23-46;

The remainder of this paper is structured as follows. We first provide a preliminary law and economics analysis of how actuarially fair premiums should provide incentives for prevention (section 2), after which we sketch the functioning of the Tariferingsbureau Auto (section 3) and Rialto (section 4). We then formulate some comparative and policy conclusions, relating the systems in Belgium (Tariferingsbureau Auto) and in the Netherlands (Rialto) to the law and economics analysis (section 5). Section 6 concludes.

2. Law and economics analysis

2.1 Goals of accident law

In the economic analysis of law, tort law is seen as an instrument to deter inefficient activities.⁴ The expectation to be held liable *ex post* should induce parties, in our case car drivers, to take adequate care or change their activity level with the purpose of reducing the accident risk.⁵ Thus according to the economic model, liability rules should be used to reach efficiency. In order to establish the efficient solution, economists state that the goal of tort law is to minimize the sum of accident costs and the costs of accident avoidance.⁶ This sum, called the social costs of accidents, can be presented as follows⁷:

$C(x,y)=p(x, y)L + A(x) + B(y)$, where:

$C(x,y)$ = the social costs of accidents

x = the level of care of the victim,

⁴ Calabresi has pointed at the fact that liability rules may equally aim at loss spreading (Calabresi's secondary costs) and at a reduction of administrative costs (Calabresi's tertiary's costs). See Calabresi G., *The Costs of Accidents. A Legal and Economic Analysis*, New Haven, Yale University Press, 1970.

⁵ See on the goals of tort law Schwartz, G., "Mixed Theories of Tort Law: Affirming both Deterrence and Corrective Justice", 75 *Texas Law Review*, 1997, p. 1801-1834.

⁶ Shavell, S., *Economic Analysis of Accident Law*, Cambridge, Harvard University Press, 1987, p. 5-6.

⁷ This is based on the model presented in Shavell, S., "Strict Liability versus Negligence", *Journal of Legal Studies*, 1980, p. 1-25.

y = the level of care of the injurer,

$A(x)$ = the victim's costs of care given a level of care x ,

$B(y)$ = the injurer's costs of care given a level of care y ,

$p(x,y)$ = the probability that an accident will occur given levels of care x and y

L = the magnitude of the loss.

This model assumes a situation where both the injurer (B) and the victim (A) can influence the accident risk. It is referred to as a bilateral model of care, in contrast to the unilateral model, where only one party (the injurer) can influence the accident risk.

2.2 Optimal care levels

It is assumed that both parties are risk neutral, that the magnitude of the loss (L) is independent of the level of care, that more care will reduce the probability (p) of an accident and that only the victim (A) suffers a loss. To minimize the social costs (C), the levels of care must be set at $x=x^*$ for the victim and $y=y^*$ for the injurer. At these efficient levels, the marginal benefits from an increase in care (reduction of $p(x, y)L$) equal the marginal cost of greater care⁸. From an economic point of view, optimal care is thus not equal to the highest care possible. The highest care might lead to spillage, since the marginal costs would be greater than the marginal benefit in reducing the expected loss. The difficulty is therefore to find the efficient levels of care, x^* and y^* . In a tort situation, transaction costs are usually prohibitive, meaning that the efficient levels x^* and y^* cannot be reached through voluntary negotiations⁹.

⁸ Brown, J.P., "Toward an Economic Theory of Liability", *Journal of Legal Studies (JLS)*, 1973, p. 323-349.

⁹ Otherwise the Coase Theorem would teach us that the efficient outcome would automatically follow through voluntary negotiations (Coase, R.H., "The Problem of Social Cost", *Journal of Law and Economics (JLE)*, 1960, p. 1-44).

The optimal level of care for a potential injurer (y^*) depends inter alia, as we indicated, on the costs of preventive measures.. These costs can of course be different for every individual. A person with specific qualities may take care at a lower cost than a person who does not possess those qualities. Since the costs of care differ, in principle also the optimal level of care (y^*) will differ. However, the legal system does not calculate the actual cost of every injurer, but follows a so-called abstract level of care, incorporated in the bonus *pater familias* notion.¹⁰ The legal system will avoid the high costs of a detailed classification of the care standard and therefore sets an average level of due care y^* .¹¹ The fact that the legal system is not able to provide a detailed classification is one of the reasons why there will be liability cases under the negligence rule.¹² Some extremely low qualified injurers will find it “cheaper to run the risk of being held liable” because the costs of taking average care required by the legal system are too high.¹³

2.3 Optimal activity levels

In this paper, we do not focus on the question which liability rules give parties incentives to adopt the optimal care levels.. In the literature it is generally held that in the case of bilateral care, both strict liability with contributory negligence and negligence with or without contributory negligence will incite parties to adopt efficient levels of care.¹⁴ However, the accident risk cannot totally be minimized by only increasing the levels of care. Accident losses depend also on the extent to which parties participate in the activity which might cause the damage (for instance the miles driven). Therefore, reducing the activity level will also

¹⁰ See Faure, M., “Economic Analysis of Fault”, in Widmer, P. (ed.), *Unification of Tort Law: Fault*, Alphen-aan-den-Rijn, Kluwer Law International, 2005, p. 317-319.

¹¹ See Diamond, P., “Single Activity Accidents”, 3 *Journal of Legal Studies*, 1974, p. 123.

¹² So Landes, W. and Posner, R., “The Positive Economic Theory of Tort Law”, 15 *Georgia Law Review*, 1981, p. 879-880.

¹³ See Faure (2005), p. 319.

¹⁴ For an overview of the literature see Schäfer, H.B. and Müller-Langer, F., “Strict Liability versus Negligence” in Faure, M. (ed), *Tort Law and Economics*, Cheltenham, Edward Elgar, 2009, p. 3-45; Diamond (1974), p. 974; Polinsky, A.M., *Introduction to Law and Economics*, 1983, p. 39; Shavell (1980), p. 11.

reduce the accident risk¹⁵. The activity level can be interpreted as any control variable not taken into account in setting the optimal level of care. In cases where more care cannot further reduce the accident risk (e.g. because the costs of taking optimal care would be too high), the only way to increase safety may be a change in the activity level. That is why society will generally hold also less capable injurers to the average care level. If their costs of meeting the average care level are too high, this may induce an activity level change such as moving to less risky activities. This could for example imply that risky drivers with such high compliance costs that they are not able to meet the optimal care levels for the average driver in society will change their activity level, i.e. no longer drive their car but for example take the bus.

2.4 Insurance

With liability insurance, the risk of being held liable is shifted from the injurer (in this case the car driver) to the insurance company. The insurer can take over the risk because the large number of participants enables him to spread the risk over a large group of people. Insurance may of course create a moral hazard risk. Some have held that if moral hazard is that serious that it cannot be adequately controlled, the best regulatory measure to take would be the prohibition of insurance. In the absence of the adequate control of moral hazard, insurance would lead to decreased levels of safety in society and should hence be prohibited.¹⁶ However, there are several remedies possible for the moral hazard risk.¹⁷ One possibility is an adequate risk differentiation, by exactly adapting premium conditions to the behaviour of the

¹⁵ Diamond (1974), p. 974; Polinsky (1983), p. 44 and Shavell (1980).

¹⁶ See Shavell, S., "On Liability and Insurance", *Bell Journal of Economics*, 1982, p. 120-132.

¹⁷ Shavell, S., "On Moral Hazard and Insurance", *Quarterly Journal of Economics*, 1979, p. 541-562.

insured. The premium then reflects the care taken by the insured.¹⁸ The essence of risk differentiation is that high risk individuals pay a larger premium than low risk individuals. This risk differentiation hence provides incentives for potential injurers to take preventive measures. From that perspective, risk differentiation may be considered socially desirable or even necessary.¹⁹

In some cases risk differentiation may be undesirable, like in the case of social security, where individuals exposed to a higher risk of illness cannot always be charged higher premiums. In the area of health care that may not necessarily be a problem since individuals can often not cause particular illnesses themselves as a result of which insurance will not necessarily increase the risk (which is precisely the problem of moral hazard). However, in the case of car drivers the problem may be different. Moreover, in the case of health insurance the ultimate alternative, i.e. refusing insurance, is not an option since it would mean that people with a high risk of illness would not be covered by health insurance. The situation is different in case of car insurance where the ultimate consequence of risk differentiation (charging high premiums to very high risk individuals) would mean that particular individuals can no longer afford a premium and would hence change their activity level, i.e. no longer drive a car. From society's perspective that may, differently than in the case of people with a high predisposition of illness, not be an undesirable consequence since it ultimately leads to decreased levels of risk in society.

¹⁸ Of course this first best solution is only possible in the ideal world where control by the insurance company would be costless and information on the behaviour of the insured readily available. In practice this is of course not true. There are, however, some means for a control of the insured and a differentiation of premium conditions according to certain groups of risk. This can either be an ex ante screening with a higher premium for certain high risk groups or an ex post premium increase or change of policy conditions based on previous loss experience (experience rating).

¹⁹ Faure, M., "Is Risk Differentiation on European Insurance Markets in Danger?", 14 *Maastricht Journal of European and Comparative Law*, 2007, p. 83-100, p. 86.

In addition to risk differentiation, the other possibility to control moral hazard is to partially expose the insured party to risk. That would mean that a deductible would be charged. In practice one will often see a combination of both systems of controlling moral hazard: some degree of differentiation of risks as well as a deductible.²⁰

Empirical research has indicated that risk segregation is necessary to reduce accident rates. Priest holds that regimes that allow for insurance premium discrimination have lower accident rates than those that limit risk segregation.²¹ Devlin showed that in Quebec, where a prohibition of insurance discrimination on the grounds of age, sex, criminal record and accident history was introduced, the result was an increase of 9.6 % in fatal accidents, 26.7 % in bodily injury claims and 5.3 % in property damage claims. This was the result of the adoption of a non-discriminating no-fault plan.²²

2.5 Optimal accident law

From the simple analysis above it appears that both liability law and insurance have an important role to play in controlling accident risks. If injurers are appropriately exposed to efficient liability rules, that will provide them with efficient incentives to take optimal care and optimal activity levels. For individuals with such high costs of care (e.g. inherently bad drivers) that their personal efforts to reach the optimal level of care required in society would be prohibitive, the only alternative is an activity level change, i.e. no longer drive the car but look for alternative modes of transportation. In fact, the same principles should apply when the liable injurer is insured. In that case his incentives for care are no longer provided through

²⁰ See Faure, M. and Hartlief, T., *Insurance and Expanding Systemic Risks*, Paris, OECD, 2003, p. 108.

²¹ Priest, G., "The Government, the Market and the Problem of Catastrophic Loss", 12 *Journal of Risk and Uncertainty*, 1996, p. 223.

²² Priest (1996), p. 236.

liability rules but through the control on moral hazard exercised by the insurer. If the control of moral hazard is optimal, the insured will again behave as if no insurance coverage were available. The insurer is hence given the incentive to take care and follow an optimal activity level through an appropriate adaptation of policy conditions. This also shows that liability insurance has a very important social function. An appropriate control of moral hazard by the insurer is not only in the interest of the individual insurer, but also of society. If there were no efficient control of moral hazard, optimal care or activity levels would not be achieved and on the whole insurance would do more harm than good.²³

A consequence of risk differentiation under compulsory insurance, like in the case of motor vehicle insurance, is that if insurers decide not to provide coverage to citizens for specific risks, a particular citizen is not able to engage in that particular activity, i.e. not drive the car. However, excluding some individuals is a normal consequence of compulsory insurance: if certain insureds have a particularly bad risk profile, they will not be able to obtain coverage or they will only be covered at an exceptionally high premium. Excluding that risky individual from the activity is a desirable effect of compulsory insurance and risk differentiation from society's perspective. It leads to risk reduction.²⁴

The core of our paper is to examine to what extent these principles are respected in the special insurance systems for motor vehicle liability that we examine. We will first sketch the systems as they exist in Belgium (3) and in the Netherlands (4).

²³ See Faure and Hartlief (2003), p. 108.

²⁴ Faure (2007), p. 95.

3. The case of Belgium: Tariferingsbureau Auto

3.1 Introduction

In Belgium, the "Tariferingsbureau Auto" was created a decade ago as a means of reducing the number of uninsured drivers.²⁵ The activities of the Bureau started on November 1st 2003. According to the members of parliament who were the authors of the bill that created the Tariferingsbureau, "the technique of risk differentiation can lead to uninsurability: this can be a technical uninsurability due to the characteristics of the risk itself (dangerousness etc.) but also an economic uninsurability when the insurer does not consider the risk to be profitable".²⁶ The authors of the bill were further of the opinion that the problem of uninsured driving should not only be addressed by more efficient law enforcement, but should also be tackled through better prevention. Before the creation of the Tariferingsbureau, there was a Pool for difficult risks, which was an initiative of the insurers only. The Tariferingsbureau consists of 4 members who represent the interests of consumers, and 4 members who represent the interests of insurers. The premiums asked by the Tariferingsbureau are lower than the premiums of the Pool.²⁷

Anybody who is obliged to take a motor vehicle liability insurance can make a request to the Tariferingsbureau if at least three regular insurers have refused to offer him insurance or are only willing to provide insurance against a high premium or deductible.²⁸ Whether a premium is high is determined as follows. First, the lowest possible premium that the insurer would ask

²⁵ Act of 2 August 2002 concerning mandatory motor vehicle insurance, *Moniteur Belge*, 30 August 2002.

²⁶ Parl. Doc., Senaat, 1999-2000, No. 2-247/2.

²⁷ Report Tariferingsbureau Auto 2003-200, available via <http://www.bt-tb.be/auto/documents/BTB-RAPP-2009-FINAL-NL.pdf>, p. 44.

²⁸ Article 9ter paragraph 1 of the Act of 2 August 2002.

for the vehicle is determined (assuming that the most beneficial conditions regarding age, region, bonus malus degree etc. apply). Then this premium is multiplied with 5 to obtain a threshold value. Whether a deductible is high is determined in the same way, except that the multiplier is 3 instead of 5. In reality, almost all of the customers turn to the Tariferingsbureau because they were denied insurance and not because they were offered a premium (or deductible) that exceeds the threshold value.²⁹ The bureau is in principle obliged to accept the individual that presents itself. There have only been rare cases where insurance has been refused, for example when someone did not have a valid driver's license or when it was medically shown that someone is not able to drive.³⁰

It is statutorily determined that the Tariferingsbureau "determines the premium taking into account the risk of the insured and the apportionment over all insureds".³¹ In reality, this implies that for more severe risks higher premiums can be applied, except if these would become uninsurable. The Tariferingsbureau takes into account the same factors that regular insurance companies use (bonus malus degree, age etc.), but can lower the premium that would be the result of these factors to make payment of the premium possible. The premiums of the Bureau can, at least in theory, exceed the threshold premiums discussed above. However, for passenger cars, a ceiling has been determined for the premium (the exact amount depends on the engine power).

The administration of the insurance contracts is assigned to a limited number of insurers. The losses of these insurers due to the contracts in which the Tariferingsbureau has determined the premium are reimbursed by the "Gemeenschappelijk Motorwaarborgfonds". Every civil

²⁹ In the period 2003-2008, less than 10 people turned to the Tariferingsbureau after they got proposals with high premiums.

³⁰ Interview with Mr Leton, chairman of the board of the Bureau on 29 April 2013.

³¹ Artikel 9^{quater}, § 2 of the statute.

liability motor insurer is obliged to join this Fund and support it financially in proportion to the number of motor vehicles it insures.³²

3.2 How incentives are given: conditions and deductibles

Given that individuals who come to the Bureau are often quite accident-prone (see further), it's extremely important to find ways to give these individuals adequate incentives to drive carefully.³³ This is basically done in two ways. First, the Bureau can impose additional conditions on the insured to lower the risk (e.g. to follow a course defensive driving; to place an instrument in the vehicle that prevents the insured from driving when he's drunk; the type of car that can be used; the moments in time one is allowed to drive etc).³⁴ Second, the Tariferingsbureau often applies a (quite substantial) deductible. Such a deductible is automatically incorporated in the contract whenever the premium would normally have been larger but the ceiling applies, and also when the premium was lowered compared to what would have been the premium if the normal criteria of the Tariferingsbureau were applied. The deductibles do not have to be consigned. The Bureau provides the following example: "A 19 year old individual makes a request for a vehicle in the sector tourism and business with engine capacity of 66 kW (90 pk). Taking into account his bonus malus degree of 22, the premium would normally be 3.172 Euro, with a deductible of 1.250 Euro. The Bureau will however adopt the ceiling of 1.980 Euro and a deductible of 2.000 Euro." Note that the

³² The obligation to create an institution to guarantee that the victim will not remain without compensation where the vehicle which cause the accident is uninsured or unidentified is the result of a European Directive (Directive 2009/103/EC of 16 September 2009) relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, Article 10, *Official Journal* 263/11 of 7 October 2009.

According to Mr Leton, chairman of the board of the Bureau it leads to a price of approximately 1 euro for every insurance contract as a contribution to the fund (interview on 29 April 2013).

³³ In some cases people had an accident every three/four months caused through their wrongful conduct. Those are obviously high risk individuals (interview with Mr Leton, chairman of the board of the Bureau on 29 April 2013).

³⁴ Interview with Mr Bertrand Leton, chairman of the board of the Bureau on 29 April 2013.

deductible has no third party effect. That means that the victim can claim full compensation and that in principle the Bureau can claim back the deductible from the insured. However, in practice this is often not done.³⁵ As a result, the insured does not pay the true cost of the accident risk since the cap put on the premium is too low.³⁶ Logically, under these circumstances it is difficult to reduce the accident risk. Even individuals that continue to have 3 to 4 accidents per year will still receive insurance coverage; only their deductible will be increased.³⁷

3.3 Data

In the period 2003-2008, about 70 to 75 percent of the proposals for a premium made by the Tariferingsbureau were accepted by the individual who made the request. Clients usually belong to the age group 26-74 years (+/- 80 percent) and to the age group minus 26 years (+/- 15 percent). Older people (75+) only make 5 percent of the requests. The proposals of the Tariferingsbureau are most often accepted by the 75+ category (+/- 85 percent), and least often by young drivers (+/- 70 percent). The reason could be that young drivers find it more easy to find coverage again on the regular market than older drivers. Young drivers are also least likely to renew their policy with the Tariferingsbureau. Clients are usually male (90% for -26, 80 % for 26-74 and 70-75 % for 75+). On average, the engine power of cars driven by male drivers, especially younger ones, is substantially higher than the engine power of cars driven by women. In the period November 2003-December 2008, 61.806 requests were made (for 68.018 drivers). This comes down to about 1.000 requests per month (and 1.100 drivers per month).

³⁵ *Ibidem.*

³⁶ *Ibidem.*

³⁷ *Ibidem.*

At the moment of turning to the Tariferingsbureau, individuals have an incidence of accidents that is at least three times higher than individuals who remain insured in the regular insurance market. The incidence of accidents is substantially higher for younger drivers (+ 5 percent compared to the categories 26-74 and 75+). On average, the bonus malus degree of individuals who get a contract from the Tariferingsbureau (and at that moment) is 5 to 6 times higher than the bonus malus degree of individuals who are insured on the regular insurance market (2.4 versus 13.7). Drivers in the age groups -26 and 26-74 had their driver's license revoked much more often than older drivers (+/- 13 percent compared to +/- 3 percent). With respect to aggravating circumstances (alcohol and drugs, hit and run, excessive speed, driving uninsured), once again younger drivers are substantially more dangerous than the other categories (the 75+ category category is least dangerous). On average, premiums paid by younger drivers are the highest (in between 1400 and 1500 Euro), at the middle for the age group 26-74 (between 900 and 1.100 Euro) and lowest for the 75+ group (750-1.000 Euro).

Now we look at the frequency of accidents and the average harm while individuals are with the Tariferingsbureau.

Table 1: Accident frequency and harm 2004-2007

2004-2007	Number of insurance years	Frequency of accidents (%)	Average damages	Pure premium (freq.x average harm)	S/Pnet (total harm/total premiums)

Tourism and business	25.882	15.6	3.474	543	0.67
Two-wheelers	717	9.5	5.156	489	1.47
Transport of goods MTM≤3.5 T	2.065	20.3	5.183	1.052	1.09
Transport of goods MTM>3.5 T	203	46.8	1.707	799	0.47
Transport of persons	396	34.6	50.164	17.355	9.05
Agricultural vehicles	102	17.6	9.205	1.624	2.04
Other	18	22.2	2.868	637	0.77
Total	29.383	16.3	4.969	810	0.99

The last column represents the total harm divided by the total premium income (with taxes excluded). According to the Tariferingsbureau, this ratio needs to be lower than 70 percent to be profitable (the excess premiums are needed to pay the administrative costs and the commission fees). As we can see, the Tariferingsbureau is not profitable ($0.99 > 0.7$). The extreme number for transport of persons (9.05) can be explained by one accident with extraordinary damages (6.5 million Euro). We can also see that some sectors are profitable, and others are not. Most importantly, the largest sector (tourism and business), is not unremunerative (0.67). However, this number is only an average for the various age groups. The table below shows that losses are made especially for the category 18-20 year olds.

Table 2: Accident frequency divided by age

2004-2007	Number of insurance years	Frequency of accidents (%)	Average damages	Pure premium (freq.x average harm)	S/Pnet (total harm/total premiums)
18- 20:beginner	11	46.4	13.553	6.254	8.19
18-20:regular driver	397	31.2	3.516	1.096	0.96
21- 22:beginner	9	31.9	1.736	550	0.68
21-22:regular driver	1.054	24.6	3.732	916	0.77
23-25:regular driver	2.540	17.2	4.095	704	0.68
25-75:regular driver	19.612	14.9	3.364	502	0.62
75+:regular driver	1.167	12.9	2.743	355	0.53
Total	24.790	15.7	3.500	551	0.64

The average of the incidence of an accident for 18 to 25 year olds with the Tariferingsbureau is 20.5 percent. For the same age group insured on the market, it is 13.1 percent.³⁸

The following table compares the incidence of harm on the market (2007) with the incidence of harm for the Tariferingsbureau (2004-2007).

Table 3: Regular market versus Bureau

2004-2007	Market (%)	Tariferingsbureau (%)	Factor
Tourism and business	6.7	15.6	2.3
Two-wheelers	2.0	9.5	4.7
Transport of goods MTM<=3.5 T	9.7	20.3	2.1
Transport of goods MTM>3.5 T	15.6	46.8	3.0
Transport of persons	28.2	34.6	1.2
Total	6.8	16.3	2.4

On average, the clients of the Tariferingsbureau cause many more accidents than individuals insured on the market (times 2.4). The exact ratios however strongly depend on the specific sector. Only for the transport of persons is the incidence of harm not much different. It differs

³⁸ Report Tariferingsbureau Auto 2003-200, available via <http://www.bt-tb.be/auto/documents/BTB-RAPP-2009-FINAL-NL.pdf>, p. 31.

most strongly for two-wheelers. As the Tariferingsbureau states itself, a lot of accident-prone persons insure via the Tariferingsbureau.³⁹

The bonus malus degree of the vast majority of individuals improves from the first to the second year with the Bureau. Data are available for individuals renewing their policy between October 2008 and January 2009 for the first time in the (largest) sector "tourism and business". There was a decrease for 85 % of the bonus malus rating and an increase for 11 %.⁴⁰ With respect to all sectors, the majority of individuals leave the Tariferingsbureau after three to five years. When they leave, their bonus malus degree is usually lower than when they came to the Bureau. An additional motive for individuals to leave the Bureau (as soon as possible) is that the Bureau only offers liability insurance for elements which are obligatory. It does not offer policies that are facultative (for material damage; legal aid).

On average, the Bureau made a loss of 3 million Euro annually in the period 2003-2008. In 2007, there were about 6.5 million insured vehicles in Belgium, so on average, the premium of individuals insured on the market increases with less than one Euro due to the losses of the Bureau. In comparison, the harm caused by uninsured drivers in 2007 was 27 million Euro, adding 4 Euro to the premiums of insured vehicles on the market. In 2007, total damages caused by individuals with a contract with the Tariferingsbureau amounted to 9.79 million Euro, while total damages caused by all insureds on the market equalled 1.04 billion Euro.

³⁹ Report Tariferingsbureau Auto 2003-200, available via <http://www.bt-tb.be/auto/documents/BTB-RAPP-2009-FINAL-NL.pdf> p. 35.

⁴⁰ Such a decrease means that in this system of experience rating (bonus malus) the premium decreases because the insured came into a lower scale.

4. The case of the Netherlands: Rialto

4.1 History

Rialto was created in 1966 by a large number of insurers, at that time under the name Terminus. The reason for its creation was that the law had introduced compulsory insurance for motor vehicles. Since not all risks are considered acceptable for the market, Terminus was created to cover risks that could not be insured on the regular market. It seemed socially undesirable that car drivers would otherwise be uninsured.⁴¹ Rialto claims to be a special insurer for special people and special situations. Rialto hence makes insurance possible that would otherwise be impossible. The reason that the original name Terminus was changed is that it sounded too negative (like a point of last resort). Rialto refers to a bridge in Venice.⁴² Not surprisingly, Rialto considers itself as a builder of bridges. More precisely, it builds a bridge between the gap in the market (refusing to insure particular risks) and the duty to have insurance coverage for motor vehicles.⁴³

On its website, Rialto announces “Rialto insures in principle almost everyone. Also when other insurers refuse to provide you with coverage, because you had a lot of damage in a short time or you did not pay your premium or you were confronted with a criminal conviction”.⁴⁴ It is held that commercial insurers too easily decide to exclude particular clients, for example if they have claimed damage twice in a period of 4 years. The former director of Rialto held that excluding those consumers provides a huge practical problem. When no one is longer willing to provide coverage for a former alcoholic or someone who had several accidents,

⁴¹ van Duijse, L., “Onverzekerbbaar? Daar is Rialto nog niet zo zeker van”, *De Beursbengel*, No. 823, April 2013, p.10.

⁴² Interview with representatives from Rialto in Den Hague on 12 February 2013.

⁴³ van Duijse (2013), p. 11.

⁴⁴ [<http://www.rialto.nl/consument/verzekeringen/index.php?id=1>], last accessed on 16 September 2013.

such a person can no longer get on the road with his car. Car drivers are forced by law to have liability insurance when they drive a car. And in 2003 the right to auto mobility is approximately a fundamental right of the “*homo economicus*”.⁴⁵

The goal of Rialto is therefore to provide a solution for the market and for society. It was considered undesirable that particular people or families would be uninsured.⁴⁶ The problem is that commercial insurers now have a tendency to kick out insureds rather quickly (for example after 2 cases of damage). This can lead car drivers to circumvent the law and drive without insurance.⁴⁷ The idea behind Rialto is clearly that it's a social responsibility of insurers to provide this coverage. Rialto is clearly not meant for a billionaire who cannot obtain coverage for his speedboat on the normal commercial market. The basic condition is that there should be scarcity in supply on the normal commercial market and that it is desirable that coverage is nevertheless provided.⁴⁸ Rialto itself does not do business with the consumer. Insureds who wish to opt for the Rialto coverage have to use the services of an insurance broker who will contact Rialto and ask for an offer for insurance coverage with an appropriate premium.⁴⁹

4.2 What is insured?

Originally Rialto started as an insurer of motor vehicles. Over the years, its activities have become much broader. Rialto now provides insurance solutions for several particular risks,

⁴⁵ Interview with Leo Bertold, the Volkskrant 27 August 2003, [<http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/705039/2003/08/27/rial>], last accessed on 27 March 2013.

⁴⁶ Interview with representatives of Rialto on 12 February 2013.

⁴⁷ *Ibidem*.

⁴⁸ *Ibidem*.

⁴⁹ See [<http://www.depremievergelijker.nl/20/rialto-verzekeringen>], last accessed on 27 March 2013 and [<http://www.strafrechtelijkverleden.nl/autoverzekering>], last accessed on 27 March 2013.

not necessarily bad ones, that are difficult to insure on the regular insurance market. For example, Rialto also insures sex shops, coffee shops⁵⁰, the liability of the owner of a lama, bronze statues, large LCD advertising screens, fancy fairs, auto crosses etc.⁵¹ Traditionally Rialto was limited to motor vehicles for individuals, but now also provides for example liability insurance and legal aid insurance for families and for small- and medium sized enterprises.⁵² Rialto would for example also insure an ex convicted criminal who can no longer obtain a liability insurance on the regular market or people with particular medical risks e.g. epilepsy. Hence, Rialto not only insures “bad risks”. Rialto intervenes for risks where the commercial insurers are no longer interested in providing coverage, also because those risks often require particular expertise which may be lacking on the commercial insurance market. In some cases Rialto also covers insureds who did not pay their bills with the commercial insurers. They are not necessarily a higher risk (in terms of insurability), but create a higher risk of insolvency.⁵³ Most of the insurance provided by Rialto is third party liability insurance, not first party (damage) insurance. The reason is that liability insurance is often necessary for people; damage insurance less so.

When a particular demand for coverage is directed to Rialto, the demand will be reviewed and on that basis a decision will be made. According to its website, Rialto insures “in principle almost everyone”.⁵⁴ However, Rialto will still examine the file and decides in each particular case whether they will indeed provide coverage. Although this is most often the case, there is

⁵⁰ In the Netherlands coffeeshops are the places where soft drugs are sold.

⁵¹ For an overview of the variety of particular risks insured by Rialto see: van Duijse (2013), p. 11.

⁵² Interview with representatives of Rialto on 12 February 2013.

⁵³ *Ibidem*. In those cases particular agreements, e.g. regarding payments in monthly instalments of the premium would be made.

⁵⁴ <http://www.rialto.nl/consument/verzekeringen/index.php?id=1>.

no automatic acceptance of risks. The decision to grant insurance should still be acceptable from an insurability and commercial perspective.⁵⁵

4.3 Premium

According to former director Bechtold, premiums with Rialto are up to three times as high as with normal insurers. However, Bechtold claims that car drivers *de facto* do not have a lot of choice: “it is either Rialto or public transport”.⁵⁶ He also claims that the high premiums have the positive side effect of leading to better driving behaviour. Moreover, if people have not caused an accident for three years, usually a commercial insurer is interested again and people can leave Rialto.⁵⁷ Premiums with Rialto are anyway higher than with normal commercial insurers since Rialto is confronted with high risks.⁵⁸ Rialto charges higher premiums on the one hand as a result of the higher risks profiles, and on the other hand because of the specialized knowledge required to cover the Rialto type risks. In principle Rialto charges risk dependent premiums according to the actuarial fair value of the risk.⁵⁹

4.4 Results

For Rialto, like for any other commercial insurer, it is important to be financially viable.. Even if the norms to accept risks are more flexible than with traditional insurers (based on the social responsibility of Rialto), a correct calculation of the risks is also the basis of the

⁵⁵ Interview with representatives of Rialto on 12 February 2013. See also van Duijse (2013), p. 11.

⁵⁶ <http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/705039/2003/08/27/rial>, last accessed on 27 March 2013.

⁵⁷ *Ibidem*.

⁵⁸ [<http://www.depremievergelijker.nl/20/rialto-verzekeringen>], last accessed on 27 March 2013.

⁵⁹ Interview with representatives of Rialto on 12 February 2013.

business model of Rialto.⁶⁰ In principle, Rialto makes profits. In the year 2000 Rialto made a profit before taxes of 2, 8 million guilders (1.27 million Euro) and after taxes of 1, 8 million guilders (816.000 Euro), also resulting from profits on investments.⁶¹ The solutions that Rialto provides hence still have to be viable from a commercial perspective.⁶² Currently, representatives of Rialto hold that they play break even as far as the motor vehicle insurance part of Rialto is concerned.⁶³ Shareholders of Rialto are insurers.

5. Comparative and policy conclusions

5.1 Special schemes and the interests of the insurance industry

An interesting question is whether the special insurance schemes are advantageous for the (motor vehicle) insurance industry. We can distinguish between two situations.

In the first situation, the insurance industry does not have to pay for the costs of accidents caused by uninsured drivers (e.g. through the creation of a fund that is financed by insurers). This is for example the case in most states in the US. Under this condition, the creation of special insurance schemes can lower the profits of the insurance industry. People may turn to the special insurance system for two reasons. First, some individuals will not be able to pay the premium asked by regular insurers, even though this premium is actuarially fair. Then the profits of the insurance industry would, depending on whether the insurance industry bears

⁶⁰ [<http://www.depremievergelijker.nl/20/rialto-verzekeringen>], last accessed on 27 March 2013.

⁶¹ [<http://www.bankingreview.nl/?portled=bankingreview&h=kennisbank/artikel&id=3752>], last accessed on 27 March 2013.

⁶² Interview with representatives from Rialto on 12 February 2013 and see van Duijse (2013), p. 11.

⁶³ Interview with representatives of Rialto on 12 February 2013.

the net losses of the special scheme, either not be affected⁶⁴ or decrease⁶⁵. Second, some individuals may try to use the special scheme to pay a lower premium than the best one available in the regular insurance market (even though they would be able and willing to pay the premium in the absence of the special scheme), especially when these premiums are supra-competitive and thus not actuarially fair. Obviously, the insurance industry would become less profitable. Note also that the fact that the risk created by the knowledge that a substantial fraction of drivers are uninsured creates a demand for first party insurance, which may increase the profits of the insurance industry. Indeed, in the US, one may include "uninsured motorists insurance" in ones coverage. Some states even require this. In conclusion, when the costs of accidents caused by uninsured drivers are not borne by the insurance industry, we shouldn't expect the industry itself to take much initiative to form a special scheme. In the US, special systems exist in each state, but they were the result of state implemented regulations. Moreover, in the vast majority of states, the number of people in the involuntary insurance market is extremely low (e.g. 39 in Alabama, 224 in Arizona, 10 in Arkansas, 5 in Colorado, 41 in Georgia etc.; only in a few states are the numbers quite substantial, e.g. North Carolina over 1.5 million, more than 200.000 in New York).⁶⁶

In the second situation, the insurance industry bears the costs of accidents caused by uninsured drivers.⁶⁷ This is for example the case in Belgium, where the "Gemeenschappelijk Motorwaarborgfonds" pays the costs of accidents caused by uninsured drivers, and this Fund is financed by all active motor vehicle liability insurers. In many other countries, like the

⁶⁴ In case the insurance industry does not pay for the losses of the special scheme. The reason is that (1) these people would not have taken the insurance anyway; and (2) although some of these people will drive uninsured and cause accidents, the insurance industry does not have to pay these costs.

⁶⁵ In case the insurance industry has to pay for the losses of the special scheme.

⁶⁶ See Hudson, Z., Residual Insurance Market Regulation, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1747296.

⁶⁷ Of course, these costs are then shifted to the insured.

Netherlands (Waarborgfonds Motorverkeer) and the UK (the Motor Insurers Bureau), a similar situation exists.⁶⁸

Theoretically, the reason why a special scheme may be beneficial for insurers in this situation is straightforward. Through the special scheme, some people who would otherwise have driven uninsured and would have caused accidents for which insurers (and ultimately insured drivers) would have to pay, now take insurance and pay for at least a fraction of the losses they cause through the premiums they pay. When law enforcement to prevent people from driving uninsured is high and effective, relatively few people will drive uninsured. The premium for insured drivers will only increase modestly, so the pool of uninsured people will not grow substantially and the profits of the insurance industry will not be affected much. However, when law enforcement is weak or ineffective, the incentive of the insurance industry to create special schemes will increase.

Note further that when the insurance industry bears the costs of accidents caused by uninsured drivers, a collective action problem may exist. When insurers become more strict in their acceptance of certain risks or when they increase their premiums, more people will not be insured and some of them will drive uninsured. A fraction of these uninsured drivers will cause accidents due to their negligence. The costs will be born by the entire motor vehicle industry. However, each insurer only pays a fraction of these costs. So insurers do not internalize the full costs (more damage by uninsured drivers) of becoming more strict or increasing his premiums.

⁶⁸ As mentioned before, chapter 4 of Directive 2009/103 “Compensation for damage caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in Article 3 has not been satisfied”, obliges every Member State to set-up or authorize a body with the task of providing compensation at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation has not been satisfied. However, the directive does not specify how this fund should be financed.

Of course, a special scheme may have disadvantages for the insurance industry as well. A special scheme, depending on how it is designed, may lead people who would otherwise have been willing to pay for the (perhaps supra-competitive) premiums offered by the regular insurance industry to turn to the special scheme where the premiums are lower. So we can expect the insurance industry to lobby for conditions that make it difficult to make use of the special scheme for such purpose. This seems to have worked quite well in Belgium. Whether a premium is high is determined as follows. First, the lowest possible premium that the insurer would ask for the vehicle is determined (assuming that the most beneficial conditions regarding age, region, bonus malus degree etc. apply). Then this premium is multiplied with 5 to obtain a threshold value. Obviously, due to the multiplier of 5, premiums need to be quite high before one may turn to the special scheme. Also, whether a premium is high is determined relative to the lowest possible premium, which can already be supra-competitive itself. In all the years after the creation of the Tarifieringsbureau, only a few people have turned to the Bureau because they were offered a premium that exceeds the threshold value. In the period 2003-2008 for example, less than 10 people turned to the Tarifieringsbureau after they got proposals with high premiums.

So in theory, when the insurance industry bears the costs of accidents caused by uninsured drivers, like in the EU member states, it may support the creation of a special scheme, at least if the conditions for using the scheme are strict enough. From an empirical perspective however, the benefits of a special scheme for the insurance industry are doubtful. Previous studies of uninsured driving rates have found no significant effect of insurance prices on uninsured driving.⁶⁹ Consequently, special schemes would mainly attract individuals who

⁶⁹ See e.g. Ma and Schmitt, 2000.

would have accepted an offer on the regular insurance market anyway, and individuals who would not have driven at all in the absence of the special scheme. The most likely reason why insurers may be interested in creating a special scheme can be found in the 2001 New Year's speech of a former director of Rialto: Rialto was created to prevent that the government would regulate compulsory insurance for difficult to insure individuals. That is why the insurance branch took the initiative in its own hand and created Terminus, which after 32 years changed its name to Rialto.⁷⁰

5.2 Social advantages and disadvantages of special schemes

One reason that is generally mentioned to support the introduction of special schemes is the reduction in the number of uninsured drivers.⁷¹ The logic is simple: when an individual with a given risk profile can obtain insurance at a premium that is lower than the premium the voluntary market would offer him, he will be more likely to take insurance. Note however that from an empirical perspective, it's uncertain whether reduced prices significantly decrease the number of uninsured drivers.⁷²

Reducing the number of uninsured individuals allegedly has allegedly three potential benefits: the spreading of costs, reduced litigation costs and a lower accident rate. We will now critically examine these advantages. First, uninsured individuals expose both themselves and others to the possibility that they will have to put up with the totality of their misfortune. Insurance allows an event that is potentially life changing from a financial perspective to have

⁷⁰ [<http://www.bankingreview.nl/?portled=bankingreview&h=kennisbank/artikel&id=3752>], last accessed on 27 March 2013.

⁷¹ See the discussion of the Tarifieringsbureau Auto and Rialto in sections 3 and 4 above.

⁷² See e.g. Ma and Schmitt, 2000.

only moderately slight monetary consequences by spreading the costs over all insured drivers.⁷³ However, at least as far as the victims are concerned, such misfortune could also be prevented by taking (first party) insurance against the risk of being involved in an accident with an uninsured driver (e.g. the "uninsured motorist clauses" in the US). And with respect to injurers, although they will regret not having taken insurance when they cause an accident, from an ex ante perspective their choice not to be insured may be privately utility maximizing.⁷⁴ Second, the costs of the litigation system may increase when the number of uninsureds increase. "Because liability insurers are more likely to settle claims quickly and out of court than negligent drivers acting on their own, the total costs of responding to a liability claim could be higher".⁷⁵ However, victims will often not bother to even start a claim against an uninsured driver, given that nothing or very little can be recuperated. This will reduce the litigation costs. Third, insurance may help to prevent harm from occurring by increasing the costs of careless driving. Insureds bear the consequences of their negligent behavior in the form of elevated premiums, uninsured individuals do not.⁷⁶ However, it's uncertain whether, for a given risk profile, uninsured people drive less safe than insured people. On the one hand, uninsured drivers indeed do not bear the consequences of their risky behavior in the form of elevated premiums. But on the other hand, they may behave in a more risk averse manner so as to not expose the fact that they are uninsured. Moreover, insured individuals exhibit moral hazard, which may to some extent increase the accident rate. The threat of elevated premiums may not be sufficient to induce safer driving. In an empirical study, Cohen and Dehejia (2004) find that that "increasing the incidence of insurance produces an increase in fatalities. The magnitude of this moral hazard effect is potentially

⁷³ Baker, T., "Risk, Insurance and the Social Construction of Responsibility", in Baker, T. and Simon, J. (eds) *Embracing Risk: the Changing Culture of Insurance and Responsibility*, 2002, p. 33-49.

⁷⁴ Of course, this will not be the case if the only reason they didn't take insurance is that they lack the funds to buy insurance.

⁷⁵ Keeton, W.R and Kwerel, E., "Externalities in Automobile Insurance and the Uninsured Driver Problem", 27 *Journal of Law and Economics*, 1984, p. 149-179.

⁷⁶ See e.g. Cohen, G.M., "Legal Malpractice Insurance and Loss Prevention: A Comprehensive Analysis of Economic Institutions", 4 *Connecticut Insurance Law Journal*, 1997-1998, p. 305.

large: a two percent increase in fatalities for each percentage point decrease in uninsured motorists."⁷⁷

Note further that the accident rate in a world with special schemes may be larger than in a world without such schemes, simply because without the scheme, some bad risks would have decided not to drive anymore after they were denied coverage by the commercial insurance market. That is precisely the desirable effect of an activity level change which is, as we argued above, an important way of reducing the accident risk (see *supra* section 2). We finally stress that the goal of the special scheme, a reduction in the number of uninsureds, may backfire for a subtle reason. When an individual is insured on the voluntary market and knows that special schemes exist to which he can turn in case his driving record gets too bad, his incentive to drive careful may be reduced.⁷⁸ This will increase the accident rate. Note that after some time this could overburden the special scheme, so that the scheme will have to ask higher premiums to cut its losses. Some of the individuals who are proposed a high premium will decide to drive uninsured and, at least in theory, the number of uninsured drivers could in the end be larger with the scheme than without it.

5.3 Rialto versus Tariferingsbureau

An interesting question is to what extent these special insurance mechanisms align with the principles of optimal accident law as we have sketched them in section 2. The crucial question

⁷⁷ Cohen, A. and Dehejia, R., "The Effect of Automobile Insurance and Accident Liability Laws on Traffic Fatalities", *Journal of Law and Economics*, 2004, p. 357-393. With an instrumental variables approach, the authors investigate the incentive effects of automobile insurance, compulsory insurance laws, and no-fault liability laws on driver behavior and traffic fatalities. They analyze a panel of 50 U.S. states and the District of Columbia from 1970-1998, a period in which many states adopted compulsory insurance regulations and/or no-fault laws.

⁷⁸ Of course it is not sure how strong this incentive will be since drivers may also know that when they are thrown out of the voluntary market and go to special systems the premium will unavoidably be higher.

is whether and to what extent these special insurance mechanisms provide incentives for adopting appropriate care and activity levels to the insured and hence increase the levels of safety in society.

Based on the limited information we have on the structure of both schemes it is not possible to provide a final answer to these important questions. This would require additional information, e.g. more detailed data on the structure of the premiums and accident rates of the insureds with Rialto and the Tariferingsbureau, especially compared to the insureds in the commercial market. The Tariferingsbureau provides some data that give some indication in that respect; data for Rialto however are unfortunately not available.⁷⁹

Nevertheless, even with the limited information available, some comparisons can be made between Rialto and the Tariferingsbureau. Looking first at the basis for these two special mechanisms, an important difference can be noticed. Rialto is a voluntary mechanism created by insurers whereas in Belgium the creation of the Tariferingsbureau was mandated by law. This statutory basis means that the flexibility for the Tariferingsbureau (e.g. to refuse risks) is definitely smaller than in the Netherlands with Rialto. Also, the scope of the activities seems to be different. Although Rialto originally focused on motor vehicle insurance, nowadays it is generally insuring all “difficult to insure” risks that can (for a variety of reasons) not always easily be covered on the normal commercial market. Motor vehicle is still an important component of Rialto, but it certainly has many other insurance activities as well. The activities of the Belgian Tariferingsbureau Auto are limited to motor vehicle third party liability insurance. As a result Rialto does not only cover bad risks. There may be some peculiar risks like the caravans from Nomad or cars of persons with a criminal history. Those

⁷⁹ The reason is that Rialto is part of a larger network, referred to as Verenigde Assurantiebedrijven Nederland (VAN). The VAN publishes annual reports, but in these reports the separate results of Rialto are not mentioned.

may be difficult to insure on the ordinary market, but do not necessarily constitute a higher risk. The Tariferingsbureau on the other hand clearly focuses on high risk individuals.

In principle, Rialto charges an actuarial fair premium. With the Tariferingsbureau that is definitely not the case. When the application of the normal tariff that the Tariferingsbureau would apply would give rise to a very high premium, the Tariferingsbureau will apply a ceiling to the premium and introduce a higher deductible.⁸⁰ Furthermore, Rialto has no duty to accept and hence there is no automatic acceptance of the risks. Given the statutory basis of the Tariferingsbureau, in principle all risks are accepted; refusals only take place in exceptional cases. Rialto thus acts quite similar as a normal commercial enterprise. Even though it may not be profit seeking, it aims at keeping its activities at a break even point and claims to be able to do so. The Tariferingsbureau makes a loss of approximately 3 million euro per year which is passed on to all insured drivers in Belgium. *De facto* this only leads to a premium increase for every insured driver in Belgium of less than 1 euro.

Comparing both systems to the economic principles of an efficient accident law sketched in section 2, the Tariferingsbureau seems to be more problematic than Rialto. The crucial question is to what extent the special insurance schemes provide optimal incentives for adopting optimal care and activity levels. This seems, at least on the basis of information at our disposal at this moment, indeed to be the case with Rialto. In principle actuarial fair premiums are charged and hence premiums should correctly reflect the risk. In the words of the previous director of Rialto: insureds can either pay the higher premium or take public transport. In that sense the desired activity level change could also be achieved through Rialto. The fact that insureds return to the commercial market after three years on average,

⁸⁰ See *supra* 4.3.

may also provide evidence of the fact that there is a positive incentive effect of Rialto. With the Tariferingsbureau that seems to be much more problematic. First, there is a ceiling on premiums as a result of which premiums will not correctly reflect risk. Moreover, the ceiling on the premium can apparently not be compensated with a higher deductible since the deductible is *de facto* not always claimed back from the insured. The Tariferingsbureau hence does not seem to provide adequate incentives for adopting optimal care and activity levels. It also takes longer for insureds with the Tariferingsbureau to return to the regular market (three to five years on average).

6. Conclusion

In this paper we have analyzed special insurance schemes that were developed in the shadow of the introduction of compulsory liability insurance for motor vehicles. The introduction of compulsory motor vehicle insurance has undoubtedly as a flipside that when particular high risk individuals are not able to obtain liability insurance, they cannot exercise a particular activity any longer, i.e. drive their car. It should be remembered however that according to the economic principles of accident law, such a result may be desirable. It could be held that when the behavior of particular individuals is so risky that the commercial market is no longer willing to insure those risks, this should provide a correct signal to the insured, namely that he should change his activity and indeed, as was mentioned, move to public transport instead of increasing safety risks in traffic. Should one therefore conclude that these types of special insurance schemes are undesirable as they are methods to keep dangerous drivers on the road and hence increase the accident risk? As the example of Rialto shows, that should not necessarily be the case. There can indeed be reasons why commercial insurers may too easily conclude to a rapid exclusion of particular risks. However, if the normal commercial

insurance market is properly functioning and sufficiently competitive, one would assume that there would always be one insurer stepping in and being willing to cover that particular risk.

As the case of Rialto shows, some risks may require more expertise and research before they can be insured, which would explain the reluctance of the commercial insurance market to cover those risks. The case of Rialto also shows that it is possible for a special insurance scheme to step in and provide coverage without disrespecting the economic principles of accident law, since actuarially fair premiums are charged. That seems, however, not to be the case with the Tariferingsbureau where a ceiling on the premium applies and the (high) deductibles are often not applied in practice. Not surprisingly, insureds at Rialto return to the regular insurance market faster than insureds with the Tariferingsbureau.

The two cases show that there is a problematic (and apparently neglected) side to this type of initiatives. Either the legislator (like in Belgium) or the insurers (like in the Netherlands) feel it necessary to provide a specific solution to allow also bad risks to be insured. This seems to correspond with a feeling that mobility is a fundamental right of the *homo economicus*.⁸¹ Some even argue that it should not be up to the insurers to decide who is allowed on the road and who is not.⁸² But it seems to be forgotten that providing those solutions under the heading of corporate social responsibility may also increase accident risks and hence decrease traffic safety levels in society.⁸³ Especially for the case of Belgium that seems to be problematic. However, we have also explained that in the presence of a system where insurers also pay for accidents caused by uninsured drivers, such a special scheme (avoiding uninsured driving, but keeping bad drivers on the road) may be in the interest of insurers.

⁸¹ See [<http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/705039/2003/08/27/rial>], last accessed on 27 March 2013.

⁸² This is *inter alia* defended by Houben, I.S.J., “Contractdwang en Verzekering”, in Hartlief, T. and Mendel, M.N. (eds), *Verzekering en Maatschappij*, Kluwer, Deventer, 2002, p. 292.

⁸³ Faure (2007), p. 97.

Of course, without a full empirical analysis of the working of those special schemes, it is too early to come to definite conclusions. Nonetheless, our preliminary analysis shows that there may be reason for concern (especially in the case of Belgium) if special insurance schemes allow bad drivers to continue their activity and thus to increase safety risks in society. These special insurance schemes therefore definitely merit further empirical research.

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